

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARMAN L. DECK,)	
)	
Petitioner,)	
)	
vs.)	No. 4:12CV1527 CDP
)	
TROY STEELE,)	CAPITAL HABEAS
)	
Respondent)	

**MOTION TO ALTER OR AMEND JUDGMENT, OR IN THE ALTERNATIVE FOR
A CERTIFICATE OF APPEALABILITY**

Petitioner Carman L. Deck moves the Court, pursuant to Fed. R. Civ. P. 59(e), to alter or amend its judgment entered April 13, 2017, granting in part his petition for writ of habeas corpus and directing that his sentence of death be vacated, and denying relief and a certificate of appealability as to all other issues. Doc. 86. In the alternative, Mr. Deck prays the Court to grant a certificate of appealability.

The procedural issues as to which relief is required are as follows: 1) denial of evidentiary hearing as to Grounds 5, 6 and 20; 2) finding that Ground 15 and part of Ground 14 were defaulted because they were reviewed by the Missouri Supreme Court only for plain error; and 3) holding that defaulted ineffective assistance of appellate counsel claims cannot be considered under the *Martinez* rule.

The specific grounds for relief as to which Mr. Deck alleges alteration of judgment or a certificate of appealability is required are: Ground 1, Improper admission of confession (application of the rule of *Stone v. Powell*); Ground 2,

change of venue; Ground 5, ineffective assistance of counsel for failure to consult false confession expert; Ground 6, ineffective assistance of counsel for failure to investigate evidence of innocence; Grounds 8 and 9, ineffective assistance of counsel for failure to object to hearsay testimony; Ground 14, improper final argument of prosecutor; Ground 16, improper instructions on burden of proof on mitigation evidence, Grounds 18 and 25, ineffective assistance of counsel for failure to conduct proper jury selection; and Grounds 19 and 20, failure to investigate and call mitigation witnesses.

For the foregoing reasons, Mr. Deck prays the Court to alter or amend its judgment, or in the alternative for a certificate of appealability.

Respectfully submitted,

/s/ Elizabeth Unger Carlyle

Elizabeth Unger Carlyle
Carlyle Parish LLC
6320 Brookside Plaza #516
Kansas City, MO 64113
Mo. Bar No. 41930
(816) 525-6540
FAX (866) 764-1249
elizabeth@carlyleparishlaw.com

/s/ Kevin L. Schriener

Kevin L. Schriener
Law & Schriener, L.L.C.
141 North Meramec Avenue, Suite 314
Clayton, Missouri 63105
Mo. Bar No. 35490
(314) 721-7095
FAX (314) 863-7096
kschriener@schrienerlaw.com
ATTORNEYS FOR PETITIONER

CERTIFICATE REGARDING SERVICE

I hereby certify that on May 11, 2017, the foregoing was served by this court's electronic filing system on all attorneys of record.

/s/ Elizabeth Unger Carlyle

Elizabeth Unger Carlyle